

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America)
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)
v.) Case No. 5:22-cr-58-1-2
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)
Serhat Gumrukcu)
Berk Eratay)
_____)

RE: Status Conference

DATE: February 22, 2024

LOCATION: Via Video Conference

BEFORE: Honorable Geoffrey W. Crawford
Chief District Judge

APPEARANCES:

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23 TRANSCRIBED BY: Sunnie Elizabeth Donath, RMR
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1 (The Court opened at 1:45 p.m.)

2 COURTROOM DEPUTY: Your Honor, the matter before the
3 Court is Criminal Case Number 22-cr-58-1-2, United States of
4 America versus Serhat Gumrukcu and Berk Eratay. Representing
5 the government are Assistant United States Attorneys Paul Van
6 de Graaf and Zachary Stendig. Representing the defendant
7 Serhat Gumrukcu is Lisa Shelkrot, Ethan Balogh, and Susan
8 Marcus. Representing Mr. Eratay is Allan Sullivan and Mark
9 Oettinger. We are here for a status conference.

10 THE COURT: All right. I think we'll be brief. It's
11 nice to see everybody again, at least on Zoom. Mr. Balogh, I
12 don't see your client, and I know we had trouble at the
13 facility getting him on Zoom. What's your preference?

14 ATTORNEY MARCUS: We agreed to waive his appearance
15 for the purpose of this status conference, and, if the Court
16 would like us to get something in writing, we can do so at a
17 later date.

18 THE COURT: Yeah, if you'd follow up in writing, I'd
19 appreciate it. Thank you. And, Mr. Sullivan, I think
20 Mr. Eratay previously filed a written waiver of appearance.

21 ATTORNEY SULLIVAN: Good afternoon, Your Honor. Yes,
22 he did. He waives his appearance.

23 THE COURT: Good, all right. I've got three things
24 on my list. The trial date, it's seven months away. I don't
25 -- I trust nobody is getting married in September. I moved it

1 up by two weeks for a couple of reasons. One is it's becoming
2 apparent to me that the, with the additional count and
3 considerable professional energy on both sides which becomes
4 more apparent by the month, the original estimate of a couple
5 of weeks may be a little tight. So I blocked you another two
6 weeks by moving it to September, September 16th.

7 Is anybody getting married or planning a world cruise
8 between September 16th and October 7th? I hear nothing. Is
9 that an inconvenient change for anyone? Appreciate it.

10 ATTORNEY MARCUS: It, well, it certainly is for Dr.
11 Gumrukcu and our preparations for the trial.

12 THE COURT: It's two weeks out of seven months.

13 ATTORNEY MARCUS: I thought we were starting on
14 October 7th and it would be three weeks --

15 THE COURT: Yeah.

16 ATTORNEY MARCUS: -- which is significant for --
17 Mr. Balogh and I, of course, have to relocate and have taken a
18 considerable amount of effort to carve out the time, and we've
19 been planning on these dates for a significant period of time.
20 We also, of course, when we said that was the earliest date
21 that we thought we could be prepared, we do need all the time
22 that --

23 THE COURT: If I can interrupt you, Ms. Marcus, it
24 was a year and a half, which I have never seen anybody ask for,
25 but your colleague made an impassioned case for it. I've got a

1 hard stop. I should put all my cards on the table. I've got a
2 hard stop personally at the end of October, and I'm worried
3 that, if we start on the 7th, that we're going to run out of
4 time, because I think this is going to take a very long time.
5 Do you see it differently?

6 ATTORNEY MARCUS: It's hard to know without, you
7 know, what, how this is going to shape up. This could be a
8 shorter trial or a longer trial depending on what the
9 government is intending to put in evidence.

10 THE COURT: A lot. We've seen it. I mean, with the
11 motion practice, it's becoming apparent.

12 The government, a longer trial or a shorter trial?

13 ATTORNEY VAN DE GRAAF: Well, Your Honor, I certainly
14 think we, we can't risk that it will, that it will not take
15 more than four weeks. I don't know if that -- so, if we
16 started on the 7th, your hard stop is four weeks or less than
17 four weeks. I think it is possible that this trial goes more
18 than four weeks, and so I don't think that -- if that is really
19 a hard stop for you, we should definitely start earlier,
20 because I think it's more important to have a little bit of
21 cushion than to not have cushion.

22 Now, I mean, I hope -- I mean, I sort of hope it doesn't
23 take more than four weeks, but I certainly can't guarantee that
24 now, and it's very possible it will. And so, if there is no
25 time in November that the Court has right after, you know, to

1 continue this beyond, October 31st, then I think we've got to
2 start earlier.

3 THE COURT: That's about how I saw it from my
4 perspective. Ms. Marcus, I just don't want to run out of time
5 for you, and I have come to appreciate -- I don't mean it in
6 anything except a positive way -- the passion that you and your
7 colleague bring to the case. I think it's going to take you a
8 long time. I've just had, you know, we've all had a peek at
9 some of the documents that have been obtained, and I think
10 that's probably the tip of the iceberg as far as both the
11 government's case and yours. I think it's hard for all of us
12 to judge, but I think we'd be foolish to think that it would be
13 over in three weeks.

14 ATTORNEY MARCUS: And is, the hard stop at the end of
15 October, what about a date in November to start, or is Your
16 Honor saying that --

17 THE COURT: We just have to get this on, and you'll
18 much prefer the weather in September to November. I, I mean, I
19 don't want to pry at all into your preparations, but I can't
20 imagine, with a year under your belt, well, close to it -- when
21 did you guys come into the case, last summer, right?

22 ATTORNEY MARCUS: Yes. It's a tremendous amount of
23 work --

24 THE COURT: Yeah.

25 ATTORNEY MARCUS: -- and evidence and work to do on

1 our part, of course. We're not -- you know, we have multiple
2 terabytes of discovery from the government, and then, of
3 course, there is our own work to do, and we don't take this
4 lightly. We, our client is, you know, we want to do everything
5 that we can to defend him --

6 THE COURT: Yes, absolutely.

7 ATTORNEY MARCUS: -- the best we can. We don't want
8 --

9 ATTORNEY BALOGH: Your Honor.

10 ATTORNEY MARCUS: -- our preparation.

11 THE COURT: Right.

12 ATTORNEY BALOGH: Can I be heard, Your Honor?

13 THE COURT: Well, it's usually one to an issue. Who
14 is that? I can't tell.

15 ATTORNEY BALOGH: This is Mr. Balogh.

16 THE COURT: Oh. Well, yes, but --

17 ATTORNEY BALOGH: The point that -- if I may, Your
18 Honor.

19 THE COURT: Go ahead.

20 ATTORNEY BALOGH: I guess my points would be three.
21 One, I think it's three weeks, and that's basically 10 percent
22 of the remaining time, and focusing on the time we've had,
23 we've structured our lives around the agreements we made to you
24 and the promises we got about when we'd start, and those were
25 settled expectations, and the idea that we can upset those

1 easily, I think that's incorrect, and I think that's unfair to
2 us.

3 Two, one of the things Your Honor said is we're getting a
4 look at documents. I'm confused by this. I saw all the motion
5 practice. It was motions on the pleadings. I didn't see any
6 papers.

7 THE COURT: I saw the papers you requested.

8 ATTORNEY BALOGH: You might be reflecting on what our
9 colleague is going to do for a motion to suppress, and that
10 will only enhance the litigation by having my colleague perhaps
11 litigate some of those issues early, but that doesn't sort of
12 augur for shortening the schedule. That augurs for time to
13 hear those motions and make sure there's space to hear them.
14 But I don't understand why this case should take more than two
15 weeks, much less than three weeks.

16 But, in any case, when we set the trial setting, we
17 settled defense expectations in a meaningful way. We also have
18 the other obligations of small practitioners of covering,
19 finishing, resolving, and managing other cases for other
20 courts.

21 THE COURT: Can I interrupt you there?

22 ATTORNEY BALOGH: Yes, you may.

23 THE COURT: I got a straight promise from Ms. Marcus
24 that it was not that problem, this was your main case, and that
25 other --

1 ATTORNEY BALOGH: Correct. I would --

2 THE COURT: Hey, don't interrupt me, Mr. Balogh.

3 ATTORNEY BALOGH: I apologize.

4 THE COURT: Give me a chance to finish, and I'll hear
5 you out. That I was not going to hear from you that you had
6 other things that you needed to do. She was very straight
7 about that.

8 ATTORNEY BALOGH: I couldn't agree more, and that was
9 in the context of we will show up and we won't seek a
10 continuance. We will show up on time. We will manage our
11 schedule. We will not seek more time. We promised you that.
12 We are meeting that promise. This is not breaking that
13 promise. This is us resisting a change in circumstances that
14 we believe prejudices the defense in a material way that's
15 unfair to the defense. That's our position, respectfully, Your
16 Honor.

17 THE COURT: All right. Anything else on this one?
18 I, I take your point that it is three weeks and not two. We'll
19 start on the 24th. I can't think two weeks seven months from
20 now is an insuperable obstacle, and it buys you the flexibility
21 to either have a shorter trial or a longer trial, however it
22 develops, without everybody worrying about whether there is
23 going to be sufficient time to complete it.

24 So, if we start on the 23rd, that gives us five weeks.
25 Mr. Van de Graaf, do you see this going past five weeks?

1 ATTORNEY VAN DE GRAAF: Your Honor, I can't
2 anticipate the future, but I will do everything in my power to
3 get it done in five weeks. I don't control everything, but I
4 will do everything in my power to get it done in five weeks.

5 THE COURT: I can't say I'm loving it. Ms. Marcus,
6 five weeks?

7 ATTORNEY MARCUS: No. It's probably -- it really
8 depends on the government.

9 THE COURT: Yeah. They say it depends on you. So
10 the one person that doesn't know how long either of you plan is
11 the judge. So help me out.

12 ATTORNEY MARCUS: It is, it is hard to say. The last
13 thing I would want to do is agree to cabin or reduce evidence
14 or not make arguments or not allow the jury sufficient time to
15 deliberate. So the hard stop, I don't --

16 ATTORNEY BALOGH: Can we inquire what's the nature of
17 the hard stop, Your Honor?

18 THE COURT: Yeah. I have to see my sister.

19 ATTORNEY BALOGH: I can't imagine this case going
20 longer than five weeks. I can't imagine this case going longer
21 than four weeks, quite frankly, but I guess, when we'll get the
22 government's 404(b) notice, that will tell us a lot more what's
23 in play, but as far as what's in-bound on this indictment, Your
24 Honor, the indictment is in. The government offered a proffer
25 last time what the fraud case was. That doesn't seem terribly

1 complex or involved. It's not document-heavy in any way,
2 shape, or form, much like most paper cases. So I don't get
3 that being extensive.

4 As I understand the murder allegations, you've got Jerry
5 Banks who pulled the trigger, and he's pled guilty and is
6 cooperating. You got Ethridge, the guy that hired him. He
7 pled guilty and is cooperating. And the people he sent the
8 transaction on the dock, that those are two witnesses, and then
9 there's the forensics of putting together the case against
10 Banks. That's pretty simple. We know that from the search
11 warrant.

12 How do we get beyond one week of trial? That's a five-day
13 case that I just described to you, and that's being generous.
14 So, yeah, five weeks, I feel comfortable.

15 THE COURT: All right, the 23rd it is. I appreciate
16 it. Thank you. Subpoenas, I left it to you guys to meet and
17 exchange information. Is that going, okay? Mr. Balogh, why
18 don't I ask you?

19 ATTORNEY MARCUS: We've been busy with the search
20 warrant motions, and we just got a response from the government
21 today on that. So we need to confer about that. So we've kind
22 of tabled -- at least as far as our team goes, we've been
23 spending a lot of time on those, the search warrant motion.

24 THE COURT: Oh, the suppression motion?

25 ATTORNEY MARCUS: Yes.

1 THE COURT: Yeah. All right. It was the Rule 17
2 sharing the information of the pretrial. I just wanted to make
3 certain that that was going forward.

4 ATTORNEY BALOGH: That's right. That's next on our
5 hit parade, Your Honor. We plan to resolve that. We're
6 obviously engaged with the government now on related issues or
7 at least motion practice, and we're focused on the case, but we
8 will be addressing that with Mr. Van de Graaf and Mr. Stendig
9 presently and proceeding in course. Or, if we seek another --
10 if we decide on a different course of conduct, we'll, of
11 course, let you know through motion practice.

12 THE COURT: I'm not sure what you said exactly. But,
13 Mr. Van de Graaf, you're content with this or no?

14 ATTORNEY VAN DE GRAAF: Well, I mean, I think that we
15 still have -- we haven't heard exactly from the defense on
16 what's going on, but we certainly will wait and get some
17 information about, you know, what's happening. If there is
18 stuff happening with the Rule 17(c) that the Court anticipated,
19 we haven't heard yet. We got some documents from the Court
20 that were produced previously, but we haven't heard about other
21 subpoenaed material yet.

22 ATTORNEY BALOGH: We'll be addressing that presently,
23 Your Honor.

24 ATTORNEY MARCUS: So I will say whatever was sent,
25 whatever was mistakenly picked up by the government and given

1 back to the Court, we have not received a copy.

2 ATTORNEY BALOGH: Maybe Mr. Van de Graaf can serve
3 us.

4 ATTORNEY VAN DE GRAAF: No, I definitely got it, so I
5 thought that you got it, too, but I can certainly give a copy
6 to them.

7 ATTORNEY MARCUS: We did not.

8 THE COURT: It's a disc. Neither of you received it,
9 Ms. Marcus, Mr. Balogh?

10 ATTORNEY MARCUS: We have not received a disc.

11 ATTORNEY BALOGH: We didn't get it.

12 THE COURT: Okay. I think we sent a disc to each of
13 you, but I'll look into it and make certain that you get it,
14 but I'm glad we're having this discussion. I thought it was,
15 you had received it. And you have other material that you've
16 received directly at your offices, right?

17 ATTORNEY MARCUS: Not much.

18 THE COURT: Ms. Marcus, I thought it was only one
19 recipient that returned the material to the court and there
20 were, I thought, several.

21 ATTORNEY MARCUS: Right. We need to see if there was
22 anything else returned. I don't offhand believe so, but we
23 will check.

24 THE COURT: All right. I'll leave it to the two
25 sides to talk it through, except our, my part is to make

1 certain that you each get the disc -- that was the intention --
2 that the phone company sent in. It's getting away from me.
3 But I'll make certain to follow up and make sure that the
4 defense gets that as well. It was a, that was the plan.

5 And the suppression motion, I only wanted to get an idea,
6 Mr. Balogh, Ms. Marcus, whoever wants to take it, as to when
7 you would like to come and what kind of a hearing you think you
8 might like to have just for scheduling purposes.

9 ATTORNEY MARCUS: I think we --

10 ATTORNEY BALOGH: Go ahead, Ms. Marcus.

11 ATTORNEY MARCUS: You know, we're reviewing. The
12 government gave us a response today on their execution of the
13 search warrants, which is what we're looking into, whether that
14 was broader than what they were allowed to search. It seems
15 like it is going to require either more conversation with them
16 or more digging on our part to determine if it's a fair motion
17 to bring. We're certainly not going to bring a motion if we
18 don't think we have reason to. So that's why we wanted
19 additional time is to just make sure that there is an issue and
20 that we want to bring a motion. So, you know, I don't think it
21 will be a lengthy hearing if we are going to be bringing a
22 motion.

23 THE COURT: Okay, easy. It's just cumbersome getting
24 everybody together. So, as soon as you -- well, I'll look at
25 the motion, but perhaps accompanying it you could put in a

1 request for time and what you think you need, and we'll hear
2 from the government as well and try and get it set up so we
3 don't lose time scheduling it. That's all I'm saying.

4 ATTORNEY MARCUS: Understood.

5 THE COURT: Yeah, all right. Those were the things
6 that I had on my mind. Mr. Van de Graaf, anything from the
7 government?

8 ATTORNEY VAN DE GRAAF: Your Honor, can you hear me?

9 THE COURT: Yes.

10 ATTORNEY VAN DE GRAAF: So, no, I didn't -- the
11 Court's order made it sound like the trial was only going to
12 last until October 11th, and that made me nervous. So it, now
13 I think you're being clear that we'll begin on the 23rd and
14 continue, we have until the end of October.

15 THE COURT: Yeah.

16 ATTORNEY VAN DE GRAAF: So I was worried that you
17 were actually moving the trial and shortening the trial.

18 THE COURT: No. I was, it was probably my poor
19 choice of words. I was trying to give you more time, not less.

20 ATTORNEY VAN DE GRAAF: That's why we're having the
21 status conference, to make sure we're all on the same page. So
22 that was my biggest question. I think that it would be
23 important for us -- it's probably too early right now, but I
24 think it's important for us, you know, as we get closer to
25 summer, to have a better schedule for different types of

1 motions and motions in limine and things like that. So the
2 Court hasn't really scheduled those yet. Maybe, at the hearing
3 on the motions to suppress, we also talk about a scheduling of
4 other things over the summer so that people can have that, you
5 know, we can have a good plan on how we're going to address
6 those issues over the summer.

7 THE COURT: All right. I'm thinking, Ms. Marcus, the
8 motion to suppress, I'm thinking about what Mr. Balogh just
9 said. So you're not certain -- or that you did -- you're not
10 certain that you'll file one at all; you're still sort of
11 making that determination, so it would be premature just to put
12 a date in so you can all start to plan, right?

13 ATTORNEY MARCUS: That's correct.

14 THE COURT: But we could put a date in and cancel it
15 when we knew.

16 ATTORNEY MARCUS: That also works.

17 THE COURT: Let's do that.

18 ATTORNEY MARCUS: Okay.

19 THE COURT: All right? So May and June get busy for
20 all of us with meetings, but how about a date in May; would
21 that be reasonable? I'm trying to think. You've got another
22 week or so to, on the extension, right, for the deadline?

23 ATTORNEY MARCUS: They're due March 7th now.

24 THE COURT: March 7th, and then April 7th for the
25 government and a response. So, if we looked for a -- we'll

1 pick a date in May. Do you have some times to avoid?

2 ATTORNEY MARCUS: I don't, no.

3 THE COURT: Mr. Van de Graaf?

4 ATTORNEY BALOGH: Nor do I, Your Honor. I'm
5 available at your convenience. Just for the record, so the
6 Court knows, I've gotten notices from the Ninth Circuit Court
7 of Appeals that two of my cases are being considered for
8 argument in, one of my cases will be considered for argument in
9 May. So that's the only thing that could keep me away, but I
10 will address that should it come to light, but there's nothing
11 -- I have no other conflict that I know of. So whatever works
12 for Your Honor.

13 THE COURT: Okay. And is there -- a Friday or a
14 Monday is probably best for you, right, so you don't sort of --

15 ATTORNEY BALOGH: Friday is better than Monday. In
16 my experience, the Circuit has never heard from me on a Friday,
17 but they hear from me on Monday all the time. So a Friday
18 would be wonderful.

19 THE COURT: All right. We'll find a Friday in May
20 and put that on. We'll take it off if it's not needed, and
21 I'll give some thought to doing the same thing for the motions
22 in limine, but that's as --

23 ATTORNEY BALOGH: As long as we're talking about
24 dates, though, if we could avoid the Memorial Day Friday, which
25 I believe is the 24th, just because that's traditionally a

1 family weekend, and so I have family obligations, but apart
2 from that --

3 THE COURT: You got it. The guy who has to see his
4 sister has not got much standing to impinge on your family
5 weekend.

6 ATTORNEY BALOGH: Thank you, Your Honor. Exactly,
7 family is important.

8 THE COURT: Yeah. No. I get it. So Memorial Day is
9 off. We'll find a date earlier in May.

10 ATTORNEY SHELKROT: Your Honor, I am scheduled to be
11 out of the country the last two weeks in May, but I think that,
12 if we're already taking the 24th off, we'll make that work one
13 way or the other.

14 THE COURT: Okay, good. Thank you. I'm glad for the
15 chance to talk. Anybody else have anything they need to bring
16 up? Otherwise, I'll let you guys go.

17 ATTORNEY BALOGH: No. Thank you kindly for the
18 audience, Your Honor.

19 THE COURT: All right. Appreciate it, thanks.

20 ATTORNEY VAN DE GRAAF: Thank you, Your Honor.

21 ATTORNEY MARCUS: Thank you.

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23 (Whereupon at 2:09 p.m. the hearing was adjourned.)

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C E R T I F I C A T E

I, Sunnie Donath, RMR, Official Court Reporter
for the United States District Court, District of Vermont, do
hereby certify that the foregoing pages are a true and accurate
transcription of my stenographic notes of the hearing taken
before me in the above-titled matter on February 22, 2024 to
the best of my skill and ability.

Sunnie Donath, RMR

Sunnie Donath, RMR